No. 00-1842

In the Supreme Court of the United States

STATOIL ASA, PETITIONER

v.

HEEREMAC V.O.F., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE FEDERAL TRADE COMMISSION AS AMICI CURIAE

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QUESTION PRESENTED

Whether federal courts have jurisdiction under the Sherman Act and the Foreign Trade Antitrust Improvements Act of 1982 (FTAIA), 15 U.S.C. 1, 6a, over the claims of a foreign plaintiff that it has been injured by a conspiracy that has direct, substantial, and reasonably foreseeable anticompetitive effects on United States trade or commerce, if the foreign plaintiff's claimed injury does not arise from those domestic effects.

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. In 1997, the United States uncovered a global price-fixing and market-allocation scheme in the heavy-lift marine construction services industry. Oil and gas companies engage heavy-lift marine construction firms to construct, install, move and remove offshore oil and gas production platforms, decks, and similar structures. Such firms use heavy-lift derrick barges, which are floating crane vessels able to lift loads exceeding 4,000 tons. Between 1993 and May 1997, respondents HeereMac, v.o.f., Saipem UK Limited, and McDermott, Inc., and their affiliates, controlled the world's supply of heavy-lift derrick barges. Pet. App. 4a-5a. Those three

companies are based in The Netherlands, the United Kingdom, and the United States, respectively. *Id.* at 5a n.2. In December 1997, the United States charged respondent HeereMac and one of its managing directors with participating in a conspiracy to rig bids for heavy-lift barge services in the United States and elsewhere, in violation of Section 1 of the Sherman Act. 15 U.S.C. 1. The corporation and individual pleaded guilty and agreed to pay fines of $49 million and $100,000, respectively. Pet. App. 6a, 56a, 57a.

In December 1998, petitioner, an oil company owned by the government of Norway, brought suit seeking treble damages for overcharges it allegedly paid to respondents HeereMac and Saipem for heavy-lift barge services in the Norwegian sector of the North Sea. Pet. App. 7a; Pet. 4-5. Petitioner purchased no heavy-lift barge services in the United States, nor did it purchase any such service from McDermott, the only U.S.-based respondent. Rather, its contracts with HeereMac and Saipem were executed and performed abroad and did not specify that United States law applied to disputes arising under those contracts. Pet. App. 5a n.3, 6a n.5.

2. The district court dismissed petitioner's suit on the ground that the alleged conspiracy to fix prices in the North Sea "did not have a direct, substantial, and reasonably foreseeable anticompetitive effect on United States trade or commerce," and thus that the court lacked subject matter jurisdiction under Section 6a(1) of the Foreign Trade Antitrust Improvements Act of

1982 (FTAIA), 15 U.S.C. 6a(1). Pet. App. 51a.[1] The court also observed that petitioner "was allegedly injured outside the United States by [respondents'] bid rigging on jobs located in the Norwegian sector of the North Sea having no direct, substantial effect on United States commerce." *Id.* at 52a. The court accordingly held that petitioner lacked standing to bring its claim, reasoning that the "United States antitrust laws do not extend to protect foreign markets from anticompetitive effects and 'do not regulate the competitive conditions of other nations' economies.'" *Ibid.* (quoting *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 582 (1986)).

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[1] The FTAIA, which in 1982 became a part of the Sherman Act, provides:

> Sections 1 to 7 of [the Sherman Act] shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—
>
> (1) such conduct has a direct, substantial, and reasonably foreseeable effect—
>
> (A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or
>
> (B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and
>
> (2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.
>
> [*Proviso*] If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1) (B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

15 U.S.C. 6a.

3. a. A divided panel of the Court of Appeals for the Fifth Circuit affirmed. Pet. App. 1a-22a. The court observed that the FTAIA extends the Sherman Act to non-import foreign conduct only when that conduct has "a direct, substantial, and reasonably foreseeable effect" on United States domestic commerce, 15 U.S.C. 6a(1), and "such effect gives rise to a claim," under the Sherman Act, 15 U.S.C. 6a(2). The court concluded that the alleged conspiracy had a sufficient effect on United States commerce within the meaning of Section 6a(1), because petitioner had alleged that "the conspiracy not only forced purchasers of heavy-lift services in the Gulf of Mexico to pay inflated prices, but also that the agreement compelled Americans to pay supra-competitive prices for oil." Pet. App. 13a-14a. The court held, however, that the district court nonetheless lacked subject matter jurisdiction under Section 6a(2) because petitioner's claimed injury—inflated prices that it paid for heavy-lift services in the North Sea—did not arise from the anticompetitive effects on United States commerce. *Id.* at 16a n.26.[2]

The court concluded that the FTAIA requires that "the effect on United States commerce * * * must give rise to the claim that [petitioner] asserts against [respondents]." Pet. App. 14a. A contrary reading of the Act, the court explained, would invite plaintiffs

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[2] The court also expressed (Pet. App. 12a) its "doubt that foreign commercial transactions between foreign entities in foreign waters is conduct cognizable by federal courts under the Sherman Act," which applies to "trade or commerce with foreign nations." 15 U.S.C. 1. The court stated that "[t]he commerce that gives rise to the action here—the contracting for heavy lift barge services in the North Sea—was not United States commerce *with* foreign nations, but commerce *between* or *among* foreign nations." Pet. App. 12a.

worldwide to "flock to United States federal court for redress, even if those plaintiffs had no commercial relationship with any United States market and their injuries were unrelated to the injuries suffered in the United States." *Id.* at 15a-16a.

b. Judge Higginbotham dissented. Pet. App. 22a-38a. In his view, Section 6a(2)'s reference to "*a* claim," rather than the "*plaintiff's* claim," means that the FTAIA confers jurisdiction whenever a conspiracy's conduct has direct, substantial, and reasonably foreseeable effects on U.S. commerce, and those domestic effects give rise to *a* claim by *some* party, even if not the plaintiff. *Id.* at 24a-26a. Judge Higginbotham reasoned that, once jurisdiction is established over the conspiracy's conduct as a whole, a plaintiff may bring suit in federal court to redress foreign injury allegedly suffered as a result of the conspiracy's effects on foreign commerce. *Id.* at 23a, 30a.

DISCUSSION

The decision in this case is the first appellate decision to address whether a plaintiff's antitrust claim involving foreign conduct must derive from that conduct's effect on domestic commerce. Appeals that raise the same issue are pending in five other courts of appeals. Thus, even if the issue otherwise warranted this Court's review, it would not be ripe for review at this time. Nor is there any basis for concluding that the Fifth Circuit's decision will impair the United States' efforts to enforce the Sherman Act against international cartels. The court of appeals was, moreover, correct in holding that the FTAIA requires that the anticompetitive effects on United States commerce must give rise to a plaintiff's claimed injuries.

A. THE ISSUE DECIDED BY THE COURT OF APPEALS IS NOT RIPE FOR THIS COURT'S REVIEW

1. Petitioner argues (Pet. 24-26) that the Court's review is warranted to resolve a conflict between the Fifth Circuit's decision and the District of Columbia Circuit's decision in *Caribbean Broadcasting System, Ltd.* v. *Cable & Wireless PLC*, 148 F.3d 1080 (1998). See also Pet. App. 55a (statement of Higginbotham, J., on denial of rehearing en banc). We disagree. In *Caribbean Broadcasting*, the plaintiff, which owned a radio station in the Eastern Caribbean (which includes Puerto Rico and the U.S. Virgin Islands), sued the owner of several competing radio stations and its joint venture partner for violations of the Sherman Act. The court of appeals held that the plaintiff had averred a "direct, substantial, and reasonably foreseeable effect" on United States commerce within the meaning of Section 6a(1), because the plaintiff allegedly had been foreclosed from selling advertisements to customers in the United States. *Id.* at 1086. That holding was limited to whether the plaintiff had alleged a sufficient impact on domestic commerce, and the court of appeals did not address whether the alleged domestic effect "gave rise" to plaintiff's claim. Indeed, the decision does not refer to Section 6a(2). See also Pet. App. 20a-21a & n.31 (distinguishing *Caribbean Broadcasting* and explaining that the claim in that case arose from an alleged effect on domestic commerce).[3]

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[3] Petitioner also errs in contending (Pet. 22-24) that the Fifth Circuit's decision conflicts with *Hartford Fire Insurance Co.* v. *California*, 509 U.S. 764 (1993). That decision neither interpreted Section 6a(2) of the FTAIA, cf. *id.* at 796 n.23, nor considered

2. Although the decision below is the first appellate decision to interpret Section 6a(2), with increasing frequency foreign plaintiffs have sued to recover damages arising out of foreign purchases of conspiratorially price-fixed items, when the conspiracy's conduct also affects United States commerce. To date, no district court that has considered the application of Section 6a(2) to such facts has embraced petitioner's reading of the Act. See, *e.g.*, *Ferromin Int'l Trade Corp.* v. *UCAR Int'l, Inc.*, 153 F. Supp. 2d 700, 704 (E.D. Pa. 2001) (citing cases); see also *Galavan Supplements, Ltd.* v. *Archer Daniels Midland Co.*, No. C97-3259 FMS, 1997 WL 732498, at *2, *3-*4 (N.D. Cal. Nov. 19, 1997) (dismissing for lack of standing). Five decisions considering the issue are pending on appeal in the District of Columbia, Second, Third, Seventh, and Ninth Circuits. *Empagran, S.A.* v. *F. Hoffman-La Roche, Ltd.*, No. 01-7115 (D.C. Cir. filed July 25, 2001); *Kruman* v. *Christie's Int'l PLC*, No. 01-7309 (2d Cir. argued Oct. 3, 2001); *BHP New Zealand, Ltd.* v. *UCAR Int'l, Inc.*, Nos. 01-3329, 01-3340, & 01-3991 (3d Cir. filed Aug. 29, 2001) (appeals from the *Ferromin* decision); *Metallgesellschaft AG* v. *Sumitomo Corp. of Am.*, No. 00-3700 (7th Cir. argued Sept. 5, 2001); *Litton Systems, Inc.* v. *Honeywell, Inc.*, No. 99-56892 (9th Cir. argued Mar. 5, 2001). Resolution of those appeals will likely provide further illumination concerning the question presented and may or may not generate a conflict in the circuits warranting this Court's review. Review by this Court at the present time accordingly would be premature.[4]

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whether the Sherman Act extends to foreign injury that lacks a connection to United States commerce.

[4] Petitioner mistakenly suggests (Reply Br. 4) that this case uniquely alleges a global conspiracy that includes geographic

B. THE COURT OF APPEALS' DECISION DOES NOT ADVERSELY AFFECT THE GOVERNMENT'S ENFORCEMENT OF THE SHERMAN ACT

Petitioner argues (Pet. 18-21) that, because the Sherman Act has the same jurisdictional reach in both civil and criminal cases, see *United States* v. *Nippon Paper Indus. Co.*, 109 F.3d 1, 4-6 (1st Cir. 1997), cert. denied, 522 U.S. 1044 (1998), this Court's review is necessary to prevent the Fifth Circuit's decision from impairing the government's ability to enforce the Sherman Act. That contention lacks merit.

1. The Fifth Circuit's holding that a plaintiff's claim must derive from the conspiracy's effect on domestic commerce does not preclude the government from prosecuting violations of the Act by global cartels. District courts have jurisdiction over illegal foreign activity that has a "direct, substantial, and reasonably foreseeable effect" on domestic commerce. 15 U.S.C. 6a(1). When an international cartel's conduct as a whole has that effect, "such effect gives rise" to the United States' "claim" under the Act. 15 U.S.C. 6a(2); see also Pet. App. 21a (noting that global conspiracy that has the effect of raising prices in the United States gives rise to a government claim).

2. Petitioner also errs in suggesting (Pet. 18-20) that the Fifth Circuit's decision may inappropriately reduce the size of fines the United States can recover under the Sentencing Guidelines, which instruct courts to use "20 percent of the volume of affected commerce" in establishing a Base Fine. Sentencing Guidelines § 2R1.1(d)(1). It is the policy of the United States to

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market allocation. Other cases contain similar allegations. See, *e.g.*, *Ferromin*, 153 F. Supp. 2d at 701-702; *Empagran*, 2001 WL 761360, at *2.

calculate the Base Fine by using only the domestic commerce affected by the illegal scheme, and in all but two of the dozens of international cartel cases prosecuted (see p. 10 & note 5, *infra*), fines obtained by the government were based solely on domestic commerce. Gary R. Spratling, *Negotiating The Waters Of International Cartel Prosecutions: Antitrust Division Policies Relating To Plea Agreements In International Cases* 14-15 (Mar. 4, 1999) (speech by Deputy Assistant Attorney General for Criminal Enforcement), *available at* <http://www.usdoj.gov/atr/public/speeches/2275. htm>. The Base Fine is then adjusted by minimum and maximum multipliers that are derived from a culpability score. Guidelines §§ 8C2.5 and 8C2.6. Using that framework, the United States has obtained very large fines against international cartels. In the last five years, fines of $10 million or more have been imposed against 35 domestic and foreign-based corporations, including six fines of $100 million or more, and one fine of $500 million, which represents the largest criminal fine ever obtained by the Department of Justice under any statute.

Moreover, and consistent with the Fifth Circuit's decision, a court may consider the foreign commerce affected by the illegal conduct when the amount of affected domestic commerce understates the seriousness of the defendant's role in the offense and, therefore, the impact of the defendant's conduct on United States consumers. In that circumstance, the court may take into account the defendant's worldwide sales affected by the conspiracy in making an upward departure in a defendant's sentence under Guideline § 5K2.0. See 18 U.S.C. 3553(b) (permitting sentence in excess of Guidelines range when court finds "that there exists an aggravating * * * circumstance of a kind, or to a

degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines").

The United States has used that approach in negotiating two plea agreements, one of which involved the conduct that is the subject of petitioner's suit. The government and respondent HeereMac, v.o.f. agreed to increase the fine by $20 million after taking into account the company's foreign sales of heavy-lift barge services of more than $1 billion as a more accurate indication of the defendant's culpability. The United States did not, however, simply plug the company's foreign sales into the Base Fine calculation of § 2R1.1(d)(1)—which would have yielded a fine exceeding $240 million—nor has it ever treated foreign sales in that way. Rather, the level of foreign sales was used as an indication of the company's culpability and that approach yielded a total fine of $49 million. See Pet. App. 56a, 60a-63a. That type of vigorous enforcement of the Sherman Act against international cartels will continue unimpaired by the Fifth Circuit's decision.[5]

C. THE COURT OF APPEALS' HOLDING IS CONSISTENT WITH THE STATUTORY TEXT, HISTORY, AND PURPOSES

Section 1 of the Sherman Act declares illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce * * *

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[5] The other instance in which a negotiated fine partially reflected foreign sales was *United States* v. *Roquette Freres*, Crim. No. CR 97-00356 (N.D. Cal. 1997), in which the defendant's United States market share was relatively small compared to its share of the worldwide market. Based on defendant's volume of United States commerce of $2.6 million, the corresponding Guidelines fine range was $748,000 to $1,282,000. The court imposed the agreed-upon fine of $2.5 million.

with foreign nations." 15 U.S.C. 1. Although Congress generally intends that its laws apply only within the territorial jurisdiction of the United States, *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244, 248 (1991), "it is well established by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States." *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764, 796 (1993); *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 582-583 n.6 (1986); see also *United States* v. *Nippon Paper Indus. Co.*, 109 F.3d 1, 4-6 (1st Cir. 1997) (holding that Sherman Act's criminal provisions apply to wholly foreign conduct with intended and substantial domestic effects).

In amending the Sherman Act in 1982, Congress in the FTAIA provided that the Sherman Act applies to import commerce, in a more limited way to United States export commerce, and to foreign conduct when "(1) such [foreign] conduct has a direct, substantial, and reasonably foreseeable effect * * * on [United States domestic commerce] * * * and (2) such effect gives rise to a claim" under the Sherman Act. 15 U.S.C. 6a. It is not disputed in this case that Section 6a confers subject matter jurisdiction over a plaintiff's claim that arises from an illegal conspiracy's anticompetitive effects on domestic commerce, whether the plaintiff is located here or abroad. Pet. App. 14a n.22 & 16a n.25; cf. *Pfizer, Inc.* v. *Government of India*, 434 U.S. 308 (1978) (holding that a foreign country may sue under the Sherman Act). The question presented in this case is whether the Sherman Act applies "where the situs of the injury is overseas and that injury arises from effects in a non-domestic market." Pet. App. 16a. The Fifth Circuit properly answered that question in the negative.

1. a. Section 6a(1) of the FTAIA provides that the Sherman Act extends to foreign non-import conduct only when it has a sufficient effect on United States commerce. 15 U.S.C. 6a(1). Section 6a(2) further requires that "such effect gives rise to a claim" under the Sherman Act. 15 U.S.C. 6a(2).

Petitioner argues (Pet. 10-13) that, because Section 6a(2) states that the requisite effects on United States commerce must give rise to "a" claim, a plaintiff need only point to the existence of some other party's viable claim arising from the same conduct that injured the plaintiff, even though the plaintiff's claimed injury has no connection to United States commerce. Read in context, however, the most natural reading of Section 6a(2)'s requirement that "such effect gives rise to a claim," is that the requisite anticompetitive effects on domestic commerce must give rise to the claim brought by the *particular plaintiff* before the court. See *Textron Lycoming Reciprocating Engine Div. AVCO Corp.* v. *UAW*, 523 U.S. 653, 657 (1998) (noting "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used") (internal quotation marks omitted); cf. *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975) ("[E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, * * * the plaintiff * * * cannot rest his claim to relief on the legal rights or interests of third parties.").

b. The Fifth Circuit's decision also comports with principles of antitrust injury and standing that ensure that the antitrust laws redress only the type of injury that the laws were designed to prevent. By requiring that the effect on domestic commerce must "give[] rise to a claim," 15 U.S.C. 6a(2), Congress incorporated

general concepts of antitrust injury and standing into the FTAIA. See H.R. Rep. No. 686, 97th Cong., 2d Sess. 11 (1982) ("[T]he Committee does not intend to alter existing concepts of antitrust injury or antitrust standing"). To establish standing to seek relief under the Sherman Act, a plaintiff must show "antitrust injury, which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). A contrary result would "divorce antitrust recovery from the purposes of the antitrust laws without a clear statutory command to do so." *Id.* at 487; cf. *National Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 488 (1998) (describing prudential standing requirement that a plaintiff's interest must arguably fall within the zone of interests to be protected by statute).

The FTAIA's text contains no hint of a statutory purpose to permit recovery where the situs of injury is entirely foreign and the injury exclusively arises from a conspiracy's effect on foreign commerce. To the contrary, the FTAIA is concerned with foreign conduct that affects commerce *in the United States*. 15 U.S.C. 6a(1). Indeed, the paramount purpose of the United States' antitrust laws is to protect consumers, competition, and commerce in the United States. See *Pfizer*, 434 U.S. at 314 ("Congress' foremost concern in passing the antitrust laws was the protection of Americans."). That purpose is served by applying the Sherman Act to foreign conduct when it has a "direct, substantial, and reasonably foreseeable effect" on United States commerce and "such effect gives rise" to the plaintiff's claim. 15 U.S.C. 6a(1) and (2). That purpose is not

served when the plaintiff's injuries have no nexus to United States commerce.[6]

Indeed, petitioner's interpretation of Section 6a would expand the jurisdiction of the Act in ways that Congress could not have intended. Consider, for example, an international price-fixing cartel with wholly foreign members that had annual foreign sales of $2 billion to 50 foreign customers, and annual sales in the United States of $1 million to one U.S. customer. Under petitioner's construction, because the domestic customer could sue based on the conspiracy's requisite domestic effects, all 50 foreign customers could bring treble-damages actions in federal court, "even if those plaintiffs had no commercial relationship with any United States market and their injuries were unrelated to the injuries suffered in the United States." Pet. App. 15a-16a.

2. Petitioner contends (Pet. 12-13) that the legislative history of Section 6a manifests a purpose to extend the jurisdictional reach of the Sherman Act to foreign injury with no connection to United States commerce. The House Report indicates, however, that Congress inserted Section 6a(2) merely to ensure that the covered foreign conduct must have an *anticompetitive* impact on domestic commerce to be actionable under

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[6] As the court of appeals recognized (Pet. App. 14a n.22 & 16a n.25), the antitrust laws protect all participants in United States commerce, regardless of nationality. Moreover, the Department of Justice and the Federal Trade Commission, the federal agencies charged with the responsibility of enforcing the antitrust laws, "do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties." U.S. Dep't of Justice & Federal Trade Comm'n, *Antitrust Enforcement Guidelines For International Operations* § 2 (Apr. 1995), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,107, at 20,589-20,592.

the Sherman Act. H.R. Rep. No. 686, 97th Cong., 2d Sess. 11-12 (1982). Absent that subsection, the House Report explains, a plaintiff injured abroad might have been able to bring suit in federal court "merely by proving a *beneficial* effect within the United States, such as increased profitability of some other company or increased domestic employment." *Id.* at 11; see also *id.* at 18. Although the House Report further indicates a legislative intent to extend antitrust protection to foreign purchasers in the "*domestic* marketplace," *id.* at 10, nothing in the FTAIA's history addresses foreign purchasers, such as petitioner, whose injuries are not linked to a conspiracy's effects on domestic commerce.

3. Petitioner also argues (Pet. 16-20) that its construction is necessary to ensure adequate deterrence of international cartels. The Fifth Circuit's holding, however, reads Section 6a broadly to extend to all plaintiffs (whether domestic or foreign) whose injuries arise from a conspiracy's anticompetitive effect on United States commerce. That holding does not undermine the Sherman Act's protection of United States consumers and commerce.

Indeed, the legal landscape in recent years has changed significantly in response to the need to deter illegal cartels operating both here and abroad. In 1974, Congress raised the statutory maximum corporate fine for a violation of the Sherman Act from $50,000 to $1 million. Antitrust Procedures and Penalties Act, Pub. L. No. 93-528, § 3, 88 Stat. 1708. In 1990, Congress increased that amount ten-fold, to $10 million. Antitrust Amendments Act of 1990, Pub. L. No. 101-588, § 4(a), 104 Stat. 2880. Moreover, since 1987, defendants may be fined up to twice the gross gain from the offense or twice the gross loss to victims of the offense if those

amounts exceed the maximum fine authorized under the Sherman Act. 18 U.S.C. 3571.

There also has been a marked growth in foreign antitrust statutes in the last decade. Today, approximately 90 countries have laws protecting competition. A. Douglas Melamed, *An Address to the 27th Annual Conference on International Antitrust Law and Policy, on the Subject of Promoting Sound Antitrust Enforcement In The Global Economy* 5 (Oct. 19, 2000), *available at* <http://www.usdoj.gov/atr/public/speeches /6785.htm>. Although it remains to be seen how vigorously foreign nations will implement or enforce their new antitrust laws—and therefore how substantial their deterrent effect will be—their existence counsels caution in extending the reach of United States antitrust laws, and makes it all the more appropriate for this Court to allow further development of the present issue in the lower courts. Of particular relevance here, Norwegian law provides for criminal prosecution and private actions in response to anticompetitive conduct, and petitioner has filed a civil action against respondents under Norwegian law. Pet. 10 n.8.[7]

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[7] The global response to the international "bulk vitamins cartel" well illustrates energetic enforcement efforts against cartels operating worldwide. The United States negotiated plea agreements with eleven corporate defendants and obtained fines of approximately $900 million. Those defendants also have paid hundreds of millions of dollars to domestic purchasers of vitamins, and further litigation continues. *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000 WL 1737867 (D.D.C. Mar. 31, 2000). In addition, European Union, Canadian, and Australian authorities obtained record fines against vitamin suppliers. European Commission, *Commission imposes fines on vitamin cartels, available at* <http://europa.eu.int/comm/competition/index_en.html> (over $750 million in fines); Australian Competition & Consumer Comm'n, *Federal Court Imposes Record $26M Penalties Against Vitamin Suppliers*

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In sum, the court of appeals' decision does not conflict with any decision of this Court or of any other court of appeals. The decision will not impair the United States' ongoing efforts to enforce the Sherman Act against international cartels, and it is correct in its interpretation of the FTAIA. Moreover, because appeals raising basically the same legal question are currently pending in five other courts of appeals—whose decisions could provide further illumination—review by this Court would be premature at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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(Mar. 1, 2001), *available at* <http://203.6.251.7/accc.internet/media/search/view_media.cfm?RecordID=267>; Canadian Competition Bureau, *Fines in Order of Magnitude-Competition Act, available at* <http://strategis.ic.gc.ca/SSG/ ct01709e.html>.